

market in the particular geographic area involved; minus

(ii) Any encumbrances.

[40 FR 48915, Oct. 20, 1975, as amended at 44 FR 43266, July 24, 1979; 48 FR 33259, July 21, 1983; 52 FR 4283, Feb. 11, 1987; 52 FR 16845, May 6, 1987; 53 FR 23231, June 21, 1988; 56 FR 36001, July 30, 1991; 57 FR 35461, Aug. 10, 1992; 57 FR 55089, Nov. 24, 1992; 59 FR 27988, May 31, 1994]

§ 416.1202 Deeming of resources.

(a) *Married individual.* In the case of an individual who is living with a person not eligible under this part and who is considered to be the husband or wife of such individual under the criteria in §§416.1802 through 416.1835 of this part, such individual's resources shall be deemed to include any resources, not otherwise excluded under this subpart, of such spouse whether or not such resources are available to such individual. In addition to the exclusions listed in §416.1210, we also exclude the following items:

(1) Pension funds that the ineligible spouse may have. *Pension funds* are defined as funds held in individual retirement accounts (IRA), as described by the Internal Revenue Code, or in work-related pension plans (including such plans for self-employed persons, sometimes referred to as Keogh plans);

(2) For 9 months beginning with the month following the month of receipt, the unspent portion of any retroactive payment of special pay an ineligible spouse received from one of the uniformed services pursuant to 37 U.S.C. 310; and

(3) For 9 months beginning with the month following the month of receipt, the unspent portion of any retroactive payment of family separation allowance an ineligible spouse received from one of the uniformed services pursuant to 37 U.S.C. 427 as a result of deployment to or service in a combat zone (as defined in §416.1160(d)).

(b) *Child*—(1) *General.* In the case of a child (as defined in §416.1856) who is under age 18, we will deem to that child any resources, not otherwise excluded under this subpart, of his or her ineligible parent who is living in the same household with him or her (as described in §416.1851). We also will deem to the child the resources of his or her

ineligible stepparent. As used in this section, the term “parent” means the natural or adoptive parent of a child, and the term “stepparent” means the spouse (as defined in §416.1806) of such natural or adoptive parent who is living in the same household with the child and parent. We will deem to a child the resources of his or her parent and stepparent whether or not those resources are available to him or her. We will deem to a child the resources of his or her parent and stepparent only to the extent that those resources exceed the resource limits described in §416.1205. (If the child is living with only one parent, we apply the resource limit for an individual. If the child is living with both parents, or the child is living with one parent and a stepparent, we apply the resource limit for an individual and spouse.) We will not deem to a child the resources of his or her parent or stepparent if the child is excepted from deeming under paragraph (b)(2) of this section. In addition to the exclusions listed in §416.1210, we also exclude the following items:

(i) Pension funds of an ineligible parent (or stepparent). *Pension funds* are defined as funds held in IRAs, as described by the Internal Revenue Code, or in work-related pension plans (including such plans for self-employed persons, sometimes referred to as Keogh plans);

(ii) For 9 months beginning with the month following the month of receipt, the unspent portion of any retroactive payment of special pay an ineligible parent (or stepparent) received from one of the uniformed services pursuant to 37 U.S.C. 310; and

(iii) For 9 months beginning with the month following the month of receipt, the unspent portion of any retroactive payment of family separation allowance an ineligible parent (or stepparent) received from one of the uniformed services pursuant to 37 U.S.C. 427 as a result of deployment to or service in a combat zone (as defined in §416.1160(d)).

(2) *Disabled child under age 18.* In the case of a disabled child under age 18 who is living in the same household with his or her parents, the deeming provisions of paragraph (b)(1) of this section shall not apply if such child—

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(i) Previously received a reduced SSI benefit while a resident of a medical treatment facility, as described in § 416.414;

(ii) Is eligible for medical assistance under a Medicaid State home care plan approved by the Secretary under the provisions of section 1915(c) or authorized under section 1902(e)(3) of the Act; and

(iii) Would otherwise be ineligible because of the deeming of his or her parents' resources or income.

(c) *Applicability.* When used in this subpart L, the term *individual* refers to an eligible aged, blind, or disabled person, and also includes a person whose resources are deemed to be the resources of such individual (as provided in paragraphs (a) and (b) of this section).

[40 FR 48915, Oct. 20, 1975, as amended at 50 FR 38982, Sept. 26, 1985; 52 FR 8888, Mar. 20, 1987; 52 FR 29841, Aug. 12, 1987; 52 FR 32240, Aug. 26, 1987; 60 FR 361, Jan. 4, 1995; 62 FR 1056, Jan. 8, 1997; 65 FR 16815, Mar. 30, 2000; 72 FR 50875, Sept. 5, 2007; 73 FR 28036, May 15, 2008; 75 FR 7554, Feb. 22, 2010]

§ 416.1203 Deeming of resources of an essential person.

In the case of a qualified individual (as defined in § 416.221) whose payment standard has been increased because of the presence of an essential person (as defined in § 416.222), the resources of such qualified individual shall be deemed to include all the resources of such essential person with the exception of the resources explained in §§ 416.1210(t) and 416.1249. If such qualified individual would not meet the resource criteria for eligibility (as defined in §§ 416.1205 and 416.1260) because of the deemed resources, then the payment standard increase because of the essential person will be nullified and the provision of this section will not apply; essential person status is lost permanently. However, if such essential person is an ineligible spouse of a qualified individual or a parent (or spouse of a parent) of a qualified individual who is a child under age 21, then the resources of such person will be deemed to such qualified individual in

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accordance with the provision in § 416.1202.

[39 FR 33797, Sept. 20, 1974, as amended at 51 FR 10616, Mar. 28, 1986; 70 FR 41138, July 18, 2005]

§ 416.1204 Deeming of resources of the sponsor of an alien.

The resources of an alien who first applies for SSI benefits after September 30, 1980, are deemed to include the resources of the alien's sponsor for 3 years after the alien's date of admission into the United States. The *date of admission* is the date established by the U.S. Citizenship and Immigration Services as the date the alien is admitted for permanent residence. The resources of the sponsor's spouse are included if the sponsor and spouse live in the same household. Deeming of these resources applies regardless of whether the alien and sponsor live in the same household and regardless of whether the resources are actually available to the alien. For rules that apply in specific situations, see § 416.1166a(d).

(a) *Exclusions from the sponsor's resources.* Before we deem a sponsor's resources to an alien, we exclude the same kinds of resources that are excluded from the resources of an individual eligible for SSI benefits. The applicable exclusions from resources are explained in §§ 416.1210 (paragraphs (a) through (i), (k), and (m) through (t)) through 416.1239 and §§ 416.1247 through 416.1249. For resources excluded by Federal statutes other than the Social Security Act, as applicable to the resources of sponsors deemed to aliens, see the appendix to subpart K of part 416. We next allocate for the sponsor or for the sponsor and spouse (if living together). (The amount of the allocation is the applicable resource limit described in § 416.1205 for an eligible individual and an individual and spouse.)

(b) *An alien sponsored by more than one sponsor.* The resources of an alien who has been sponsored by more than one person are deemed to include the resources of each sponsor.

(c) *More than one alien sponsored by one individual.* If more than one alien is sponsored by one individual the deemed resources are deemed to each alien as if he or she were the only one sponsored by the individual.